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C O N F I D E N T I A L SECTION 01 OF 02 KYIV 001180

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SUBJECT: UKRAINE: NEGOTIATIONS STALLING OUT AGAIN?

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11. (C) Summary. Despite talk over the weekend that President Yushchenko and Prime Minister Yanukovych would finalize a political compromise that included early parliamentary elections on May 16, talks between the two leaders fizzled out as disagreements over the date of a new vote and what the legal basis for the new elections would be remained unresolved. Privately, Deputy Head of the Presidential Secretariat Chaliy and PM Foreign Policy Adviser Gryshchenko

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told Ambassador that a possible way forward might be for Yanukovych to dissolve the coalition; if a new coalition was not formed within 30 days, the President would have the explicit constitutional right to dissolve the Rada. Regions MP Kolesnikov, a close ally of oligarch Rinat Akhmetov, told Ambassador that some in Regions favored a different strategy: the President would dissolve the Rada after 30 days without quorum, but in exchange, Regions would get to implement constitutional amendments that would effectively push the election date back to October 28.

12. (C) Summary ctnd. Publicly, both PM and President increased their public rhetoric before meeting. Yanukovych told the Cabinet that elections would be a solution only if there was a legal basis--a departure from his broader endorsement of new elections on May 4--and said that he hoped for a Constitutional Court ruling in the near future, as the two Judges Yushchenko fired returned to work under a regional court order. Yushchenko told the press that if nothing was fixed by May 18, he would ask the NSDC to resolve the crisis at its scheduled meeting. Publicly, their seconds-in-command, First Deputy PM Azarov and NSDC Secretary Plyushch, told the press that the two leaders had decided to give the working group a couple more days to iron out key differences.

13. (C) Comment. Although both sides have indicated that a fall election might be acceptable, apparently neither side was happy enough with the deal to finalize it. The Ambassador continues to encourage all participants to find a compromise and to reiterate that dramatic steps from either camp may only jeopardize a political resolution. Some in Regions again appear to be banking on the threat of a favorable CC ruling against the President as a pressure point against Yushchenko. Chaliy told Ambassador that the President's team feels that the PM may be backing away from early elections and that this is a "dangerous and uncertain time" that might require strong presidential action, implying that Yushchenko may be poised to use the NSDC to overrule the Court or the Government to enforce his decree. Even if both sides are simply ratcheting up the rhetoric in hopes of getting a better deal in a political compromise, the longer

they go without a final agreement, the more likely it is that elections will not take place until the fall. Such a delay allows Regions time to increase social spending to bolster its political standing and more opportunity to chip away at Yushchenko's new-found popularity; he outranks opposition leader Tymoshenko for the first time in more than a year. End summary and comment.

No Progress Made in President-PM Talks

14. (SBU) Although Plyushch and Azarov told the press on May 12 that the President and PM would decide on an election date on May 16, the meeting between the two leaders, with Plyushch and Azarov present, produced no results. In a briefing afterwards, the two lieutenants said that the working group would be given a few more days to work out remaining disagreements, of which, Plyushch said, there were more than they had originally thought. Plyushch indicated that he believed constitutional amendments would be needed, although the group would try to work around that. Azarov said that he thought the problems could all be resolved through legislation.

15. (SBU) Prior to the meeting, Yanukovych held a Cabinet meeting at which he spoke of the possibility of elections, only if the proper legal grounds were established, a seeming backtrack from his May 4 agreement with Yushchenko that early elections were part of the deal. He also demanded that the full Rada get back to work and that the President start signing laws passed by the Rada. Yanukovych also announced that he planned for 40 percent increases in wages and 33 percent increases in pensions by the end of the year. (Comment. The wage and pension increases, which could cause fiscal problems if fully implemented, appear aimed at building up popular support for Regions before elections take place, probably one reason why Regions is pushing hard for a fall election date. End comment.) Regions faction leader Bohatyreva told Ambassador on May 15 that they could not help

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it if such social spending looked like it was election-related; they were, she argued, simply part of an economic policy that Regions had advocated all along.

Chaliy and Gryshchenko: Elections Need Legal Basis

16. (C) Deputy Head of the Presidential Secretariat Chaliy and PM Adviser Gryshchenko told Ambassador separately late on May 16 that there were two remaining points of dispute between Yushchenko and Yanukovych: the date of the election and the legal basis for holding the election. Gryshchenko said that Regions is still committed to early elections, but there has to be solid legal grounds, so that no one can challenge the new vote later on. He said that they were considering having Yanukovych dissolve the coalition and then refuse to form a new one; this would invoke constitutional article 90, which says the President can dissolve the Rada if a coalition is not formed within one month.

17. (C) Chaliy also mentioned this scenario to Ambassador, but he cautioned that his team was worried that Regions might renege on the agreement on early elections. He said this was a "dangerous and uncertain" time and he warned that strong presidential action might be needed. He seemed to be implying that Yushchenko might use the NSDC to move forward on elections, which Yushchenko suggested publicly, although he did not specify how.

Kolesnikov, Bohatyreva: Fall Elections Are Best

18. (C) Regions MP Borys Kolesnikov, the political yin to Akhmetov's financial yang, told Ambassador late on May 16 that he did not think Regions dissolving the coalition itself

was a sound political strategy. Instead, the Rada would stop meeting for 30 days, invoking constitutional article 82, which says that without a two-thirds quorum, the Rada is not competent. In exchange for agreement on early elections, Kolesnikov argued that Regions should be allowed to amend article 90, to avoid a similar political crisis in the future. He added that amending the constitution requires two votes in two separate Rada sessions, so by his timeline new Rada elections would take place October 28. Early September was bad anyway, he stated, because it would mean a summer campaign. Kolesnikov also said that BYuT was comfortable with fall elections, with the condition that the threshold to get into the Rada be raised from its current 3 percent. (Note. Kolesnikov did not say to what level the threshold might be raised, but conventional wisdom in the past has been 5-7 percent. End note.)

¶9. (C) In a May 15 meeting, Regions faction leader Bohatyreva also argued strongly to Ambassador that an October election made a lot more sense--they needed to wait until people were back at work and students back in school. She also said that Regions wanted Our Ukraine and Yushchenko to have a higher political rating than Tymoshenko and her Bloc. She argued that that Regions and OU were the two parties that shared the most similar ideology; her party's strategy would be to advertise that similarity to the electorate. Regions believed that Yushchenko had to demonstrate that he was President of the whole country and that he needed to do it quickly--after all, 2009 was not that far away. (Note. A reference to the next presidential election. End note.)

Constitutional Court: Back to Full Capacity

¶10. (C) Yanukovych announced at the May 16 Cabinet meeting that CC Judges Pshenychniy and Stanik were back at work--on May 15 a Donetsk court overturned Yushchenko's decrees firing them, although a Donetsk appellate court froze that decision on May 16 while it hears the case. The PM said that he was hoping for a Court ruling in the near future. Kolesnikov also gave the sense that some in Regions would like a CC decision. Yushchenko's nominee to replace Pshenychniy on the Court, Stepan Havrysh, told the press on May 16 that he expected a CC ruling by Friday May 18, and many press sites are reporting that the CC has moved to consider the April 2 and April 26 decrees together. However, Judge Shyshkin told us privately that although it was true that Stanik and Pshenychniy had returned to work, the Court was not considering either decree, but rather reviewing procedural issues. Given that fact, he did not see how a decision could be reached by May 18.

¶11. (U) Visit Embassy Kyiv's classified website:
www.state.gov/p/eur/kiev.
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